

PROSKAUER ROSE LLP

John P. Barry  
Alychia L. Buchan  
One Newark Center  
Newark, New Jersey 07102-5211  
Telephone: 973.274.3200  
Fax: 973.274.3299  
*Attorneys for Defendants*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

----- X  
BYRON HUART and KEVIN HUART,

*Plaintiffs,*

**CIVIL ACTION NO.: 10-5437 (FSH)(PS)**

v.

THE GREAT ATLANTIC & PACIFIC TEA  
COMPANY, INC., A&P, TONY ALIBRONDO,  
JOHN BINCELLETO, JOHN DOES 1-15  
(fictitious entities), and XYZ CORPORATIONS  
1-5 (fictitious entities),

*Defendants.*

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**NOTICE OF MOTION  
TO DISMISS THE COMPLAINT**

TO: Robert G. Devine, Esq.  
Katrina D. Gibson, Esq.  
White and Williams LLP  
Liberty View  
457 Haddonfield Rd., Suite 400  
Cherry Hill, New Jersey 08002-2220  
*Attorney for Plaintiffs*

**PLEASE TAKE NOTICE** that on **December 6, 2010 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, the undersigned attorneys for defendant The Great Atlantic & Pacific Tea Company, Inc., and individual defendants John Bincoletto and Anthony Alibrando (collectively, "Defendants"), shall move before the Honorable Faith Hochberg, U.S.D.J., at the

United States District Court of New Jersey located at Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, for an Order, pursuant to Fed. R. Civ. P. 12(b)(6), partially dismissing Plaintiffs' Amended Complaint (Counts I through IV and Count VI) with prejudice.

**PLEASE TAKE FURTHER NOTICE** that in support of this Motion, Defendants will rely on the Memorandum of Law in Support of Defendants' Partial Motion to Dismiss the Amended Complaint and the Declaration of John P. Barry, Esq., filed herewith.

**PLEASE TAKE FURTHER NOTICE** that a proposed form of order is submitted herewith.

Dated: November 11, 2010  
Newark, New Jersey

PROSKAUER ROSE LLP

/s/ John P. Barry  
John P. Barry (jbarry@proskauer.com)  
Alychia L. Buchan (abuchan@proskauer.com)  
PROSKAUER ROSE LLP  
One Newark Center  
Newark, New Jersey 07102-5211  
Telephone: 973.274.3200  
Fax: 973.274.3299  
*Attorneys for Defendant*